STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0319

In Re:
Henry Hickman,
Appellant,

vs.

Paul Schnell, Commissioner of MN Dept. of Corrections, et al.,
Defendants,

Sgt. D. Franklin, Corrections Officer at Rush City MN, State Prison,
Respondent.

Filed February 6, 2023
Affirmed
Bratvold, Judge

Chisago County District Court
File No. 13-CV-20-807

Henry Hickman, Rush City, Minnesota (pro se appellant)

Keith Ellison, Attorney General, Anna Veit-Carter, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Gaïtas, Presiding Judge; Bratvold, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant, an inmate, injured his wrist when a security door closed as he exited the residential wing of a state prison. He seeks review from a judgment dismissing his claims

against respondent, the corrections officer who operated the security door. Appellant argues that the district court erred by granting summary judgment dismissing his negligence and battery claims and by dismissing his 42 U.S.C. § 1983 (2018) claim for failing to state a claim upon which relief can be granted. We conclude that, in response to evidence submitted by respondent, appellant produced no evidence from which a jury could find that respondent breached his duty of care to appellant or that respondent intentionally closed the door on appellant as alleged in the complaint, defeating his negligence and battery claims. We also conclude that any error was harmless in the district court's decision to dismiss the section 1983 claim. Thus, we affirm.

FACTS

The record, viewed in the light most favorable to Hickman, reflects the following facts. In May 2020, pro se appellant Henry Hickman was 63 years old and an inmate at Minnesota Correctional Facility-Rush City (MCF-Rush City). Hickman resided in North B-Wing of Complex 4. Respondent Sergeant D. Franklin was a corrections officer at MCF-Rush City and was stationed in Complex 4 as the North Complex bubble officer.

Bubble officers follow MCF-Rush City's Offender Movement Control Operating Guidelines (operating guidelines). Under the operating guidelines, bubble officers oversee "switch outs," which are large movements of inmates between a residential wing and the rest of the facility. During a switch out, inmates pass through a security door. The operating guidelines direct bubble officers to announce three stages of the switch out: (1) five minutes before the switch out begins, (2) when the switch out begins and a security door opens, and (3) one minute before a security door closes at the end of a switch out.

Bubble officers use a touch screen to open and close a security door during a switch out. The security door for North B-Wing, where Hickman resided, is a large steel sliding door that takes about seven seconds to fully open or to fully close. A bubble officer can stop a security door's movement by pressing "stop" on the touch screen. When a bubble officer presses "stop," about one second elapses before the security door stops. Franklin averred that bubble officers "are not supposed to close a security door while an offender is in the doorway."

Inmates receive MCF-Rush City's Offender Information and Informal Sanctions Handbook (offender handbook), which provides that an inmate must switch out "at designated times" and is allowed "two minutes to exit" the area "after the switch out is called."

In support of his motion for summary judgment, Franklin submitted an affidavit about the day that Hickman was injured during a noontime switch out when inmates left North B-Wing to go the lunchroom. Franklin averred that on May 4, 2020, he announced (1) five minutes before the switch out began, (2) when the switch out began, and (3) when there was one minute remaining in the switch out.

Two surveillance cameras recorded events during the switch out, and the summary-judgment record includes two video exhibits. Exhibit C is a video recording of the security door between North B-Wing and the rest of the facility from about 12:35 p.m. to 12:39 p.m. Exhibit D is a video recording of the interior of North B-Wing from about 12:35 p.m. to 12:39 p.m. Both exhibits C and D include time stamps but do not include audio.

The following summarizes the two video recordings. At 12:35 p.m. and 31 seconds, Franklin begins opening the security door, which is fully open at about 12:35 p.m. and 38 seconds. Exhibit D shows Hickman exiting a cell on the upper level of North B-Wing at about 12:36 p.m. and 53 seconds. He is wearing glasses, a gray sweatshirt with a white shirt underneath it, gray sweatpants, and white tennis shoes. From 12:36 p.m. and 53 seconds to 12:37 p.m. and 33 seconds, Hickman stands outside the cell on the upper level. At 12:37 p.m. and 33 seconds, Hickman reenters the cell for about four seconds before exiting the cell again at 12:37 p.m. and 37 seconds. At 12:37 p.m. and 45 seconds, Hickman starts descending the stairs from the upper level of B-Wing.

At 12:37 p.m. and 53 seconds, the doorway with the security door is clear and Franklin begins closing the door. Exhibit C shows Hickman about ten feet from the security door when it starts closing. Four seconds after Franklin begins closing the door, Hickman squeezes through the security door. Hickman takes about one second to clear the doorway. Exhibit C shows the security door jerk before it finishes closing at 12:38 p.m.

In December 2020, Hickman sued Franklin along with other parties not involved in this appeal.[1] Hickman's complaint alleged that Franklin negligently or intentionally closed the security door "on [Hickman's] left wrist," causing injury, and "Franklin had the opportunity to stop the metal door" but failed to do so. Based on these alleged facts,

[1] Hickman also asserted causes of action against Paul Schnell, the commissioner of corrections, and Vicki Janssen, the warden at MCF-Rush City. Schnell and Janssen moved to dismiss Hickman's complaint against them for failure to state a claim. The district court dismissed Hickman's claims against Schnell and Janssen, determining that the complaint failed to plead a claim upon which relief can be granted because they are entitled to official immunity. Hickman did not appeal the dismissal of his claims against Schnell and Janssen.

Hickman asserted three claims: negligence, battery, and a claim for violation of the Eighth Amendment under 42 U.S.C. § 1983.

In July 2021, Franklin moved to dismiss the complaint under Minn. R. Civ. P. 12.02(e) for failure to state a claim upon which relief can be granted. The district court granted Franklin's motion in part, dismissing Hickman's section 1983 claim, and denied it in part, determining that Hickman pleaded sufficient facts to support his negligence and battery claims.

In December 2021, Franklin moved for summary judgment under Minn. R. Civ. P. 56, relying on affidavits and various exhibits, including the video recordings. Hickman opposed the motion and, in his affidavit, asserted that Franklin's "inattention or sloppiness caused the injury." Hickman also argued in his memorandum that the video recordings supported his claim that Franklin "closed a heavy metal door on" Hickman.

At the end of a hearing during which Franklin's attorney and Hickman argued their positions, the district court granted Franklin's motion for summary judgment dismissing Hickman's negligence and battery claims. The district court explained that no evidence showed that Franklin breached a duty of care because the security door was open for "more than two minutes," the period provided in the offender handbook for exiting during a switch out. The district court also determined that no evidence showed that Franklin intentionally closed the door "in an effort to harm" Hickman. Following the hearing, the district court issued an order directing entry of judgment for Franklin.

Hickman appeals.

DECISION

I. The district court did not err by entering summary judgment against Hickman on his negligence claim.

"Summary judgment is appropriate when the evidence, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 753 (Minn. 2005); *accord* Minn. R. Civ. P. 56.01. We review a district court's summary-judgment decision de novo to "determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010).

Franklin contends that the district court erred by granting summary judgment dismissing his negligence claim. "Negligence is the failure to exercise the level of care that a person of ordinary prudence would exercise under the same or similar circumstances." *Doe 169 v. Brandon*, 845 N.W.2d 174, 177 (Minn. 2014). Negligence consists of "four elements necessary for recovery: (1) the existence of a duty of care, (2) a breach of that duty, (3) an injury, and (4) the breach of that duty being the proximate cause of the injury." *Louis v. Louis*, 636 N.W.2d 314, 318 (Minn. 2001).

Franklin does not dispute that he owed Hickman a duty to exercise reasonable care while operating the security door. An individual owes a duty of care if an injury is foreseeable. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 888 (Minn. 2010). Thus, the issue here is whether Hickman offered evidence to create a genuine issue of

material fact as to whether Franklin breached his duty of care when he operated the security door while Hickman exited during a switch out.

An individual acts with reasonable care if they "exercise the degree of care which a reasonably prudent person would exercise under the same or similar circumstances." *Domagala v. Rolland*, 805 N.W.2d 14, 28 (Minn. 2011) (quotation omitted). Breach of the duty of reasonable care is generally a question of fact for the jury to decide. *Sauter v. Sauter*, 70 N.W.2d 351, 354 (Minn. 1955); *Stelling v. Hanson Silo Co.*, 563 N.W.2d 286, 290 (Minn. App. 1997). Still, summary judgment is proper "when the record contains a complete lack of proof on any of the four essential elements of the negligence claim." *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 672 (Minn. 2001).

Although the summary-judgment evidence is viewed in the light most favorable to the nonmoving party, that party "cannot rely on mere averments in pleadings or unsupported allegations." *Naegele Outdoor Advert. Co. of Minneapolis v. City of Lakeville*, 532 N.W.2d 249, 254 (Minn. App. 1995), *rev. denied* (Minn. July 20, 1995). Hickman offered no evidence that Franklin breached the duty of care. Hickman alleged in his complaint that Franklin breached his duty by negligently or intentionally closing the security door on Hickman and failing to stop the door from closing when Hickman was in the doorway. Hickman merely repeated these allegations in his affidavit filed in response to Franklin's summary-judgment motion. These general averments are inadequate to dispute evidence related to Franklin's conduct.

In support of his motion, Franklin offered the video recordings of the incident along with affidavit evidence. Franklin's evidence shows that from the time he opened the

security door to when he initiated its closing, about 40 inmates safely passed through the security door. Hickman did not dispute that Franklin announced the switch out one minute before the security door opened, when the door opened, and one minute before the security door closed. Hickman also did not dispute that the offender's handbook required him to exit within two minutes after a switch out is called.

Hickman's memorandum in opposition to summary judgment asserted that the video recordings show Franklin's negligence. We disagree. Exhibit C shows that when Franklin started to close the security door, the doorway was clear of inmates and Hickman was about ten feet from the doorway. Also, Franklin's affidavit averred that he "waited until the doorway was clear" before "he closed the security door" and that when he began closing the door, "Offender Hickman was nowhere near the door." Exhibit C also shows that it took Hickman one second to go through the doorway. This is the same amount of time it would have taken for the door to stop had Franklin pressed the stop button upon Hickman entering the doorway.

Based on the evidence produced in support of Franklin's motion for summary judgment, which was unrebutted, we conclude that no evidence shows Franklin breached his duty of reasonable care. Indeed, the video recordings and Franklin's affidavit lead to only one conclusion: that Franklin exercised reasonable care while closing the security door. When the plaintiff's version of relevant events is contradicted by an unambiguous video recording, summary judgment may be appropriate. *See Scott v. Harris*, 550 U.S. 372, 381 (2007) (reversing district court decision to deny motion for summary judgment on section 1983 claim because there was no genuine issue of material fact where the

nonmoving party's version of the facts contradicted a videotape). Thus, the district court did not err by granting summary judgment dismissing Hickman's negligence claim.

II. The district court did not err by entering summary judgment against Hickman on his battery claim.

Hickman contends that the district court erred by dismissing his battery claim on summary judgment. We have already discussed the relevant rules and caselaw governing our review of a summary-judgment ruling. "Battery is an intentional, unpermitted offensive contact with another." *Johnson v. Morris*, 453 N.W.2d 31, 40 (Minn. 1990). Intent is a central issue in a battery action. *Brown v. State Auto. & Cas. Underwriters*, 293 N.W.2d 822, 825 (Minn. 1980). An individual acts intentionally when they mean to cause harmful or offensive contact or "when the nature and circumstances of [their] act were such that harm was substantially certain to result." *State Farm Fire & Cas. Co. v. Wicka*, 474 N.W.2d 324, 329 (Minn. 1991).

Hickman offered no evidence of Franklin's intent and, as mentioned above, appeared to rely solely on the video recordings that Franklin submitted in support of the motion for summary judgment. The video recordings and Franklin's affidavit, however, contradict Hickman's allegation that Franklin "acted with specific intent to harm, when [Franklin] purposely closed the [security door] on [Hickman's] left wrist . . . . [Franklin] had the opportunity to stop the metal door but decided to allow the metal door to continue closing."

Franklin's affidavit stated that he gave a one-minute warning before he closed the security door, the doorway was clear when he initiated its closing, and he did not intend to

shut the door on Hickman. The only other evidence from which Franklin's intent may be inferred is the video recordings. Exhibit C shows that the doorway was clear when Franklin initiated closing the security door, Hickman was about ten feet from the doorway when Franklin began closing the security door, and Hickman squeezed through the doorway four seconds after Franklin began closing the door. And exhibit C shows it took Hickman one second to go through the doorway. This is the same amount of time it would have taken for the door to stop had Franklin pressed the stop button when Hickman entered the doorway. The video evidence, therefore, does not support any inference that Franklin intentionally closed the security door on Hickman or that Franklin intentionally failed to stop the door from closing on Hickman. *See Scott*, 550 U.S. at 381 (stating that courts may grant summary judgment based on a videotape recording that contradicts the nonmoving party's version of events).

The only evidence in the record shows that Franklin followed operating guidelines and did not intend to shut the door on Hickman. And no evidence shows Franklin knew that harm to Hickman was substantially certain to result from closing the security door. *See Wicka*, 474 N.W.2d at 329 (describing circumstances from which an intent to injure can be inferred). Thus, no genuine issue of material fact exists on Franklin's intent to harm Hickman, and the district court properly granted Franklin's motion for summary judgment. *See Funchess*, 632 N.W.2d at 672 (summary judgment may be appropriate when there is no proof on an element of a tort claim).

III. Any error in dismissing Hickman's section 1983 claim was harmless.

A complaint must "contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought." Minn. R. Civ. P. 8.01. The district court may dismiss a complaint upon a party's motion if it "fail[s] to state a claim upon which relief can be granted." Minn. R. Civ. P. 12.02. Dismissal under rule 12.02(e) is proper if "it appears to a certainty that the plaintiff can introduce no facts consistent with the complaint to support the claim for relief." *State by Smart Growth Minneapolis v. City of Minneapolis*, 954 N.W.2d 584, 596-97 (Minn. 2021) (quotation omitted). "We review de novo whether a complaint sets forth a legally sufficient claim for relief. We accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Walsh v. U.S. Bank, N.A*, 851 N.W.2d 598, 606 (Minn. 2014) (citation omitted).

Hickman argues that the district court erred by dismissing his section 1983 claim against Franklin. Section 1983 creates a private cause of action against state officials who violate a person's constitutional rights. A prison official violates the Eighth Amendment and acts with deliberate indifference if "they are subjectively aware that a prisoner faced a substantial risk of serious harm and yet disregarded the risk by failing to take reasonable efforts to abate it." *Welters v. Minn. Dep't of Corr.*, 982 N.W.2d 457, 471 (Minn. 2022). Unlike negligence, "deliberate indifference requires a highly culpable state of mind approaching actual intent." *Kulkay v. Roy*, 847 F.3d 637, 643 (8th Cir. 2017).

On appeal, Hickman contends that Franklin violated the Eighth Amendment by acting with deliberate indifference with respect to a prison condition that exposed Hickman

to a substantial risk of serious harm while he exited the secured doorway during a switch out.[2] The district court granted Franklin's motion to dismiss Hickman's section 1983 claim after determining that Hickman did not "sufficiently allege in his Complaint that shutting the door was a punishment." Under applicable caselaw for a section 1983 claim, Hickman need not allege that closing the door was punishment. Rather, Hickman must allege facts sufficient to establish, if proved, that Franklin was deliberately indifferent to a substantial risk of serious harm. *See Welters*, 982 N.W.2d at 471.

Reynolds v. Dormire guides our analysis of Hickman's claim because in that opinion, the Eighth Circuit considered what allegations sufficiently pleaded deliberate indifference to a substantial risk of serious harm. 636 F.3d 976, 980 (8th Cir. 2011).[3] In support of his section 1983 claim, Reynolds's complaint alleged that he fell into a pit while getting out of a transport van because a prison official parked the van too close to the pit. *Id.* It also alleged that the prison official backed away from Reynolds as he lost his footing. *Id.* The Eighth Circuit determined that these allegations supported a finding of "mere negligence," but that negligence was insufficient to state a section 1983 claim. *Id.* The Eighth Circuit noted, however, that Reynolds's complaint also alleged that "investigation

[2] Franklin contends that Hickman did not appeal the dismissal of his section 1983 claim. But Hickman's brief to this court repeatedly contends that Franklin acted with "deliberate indifference" and references the Eighth Amendment and section 1983. We therefore conclude that Hickman's appeal challenges the dismissal of his section 1983 claim.

[3] We recognize that *Reynolds* applies the federal plausibility pleading standard, which does not apply to civil pleadings in Minnesota state court. *See Walsh*, 851 N.W.2d at 600. We are neither assuming nor holding that the federal standard applies to a complaint asserting a federal claim filed in Minnesota state court.

will more than likely show that plaintiffs falling into this pit is not an isolated incident." *Id.* Reasoning that this allegation supported the inference that the prison officials "were aware of the substantial risk to his safety and that they recklessly disregarded that risk," the Eighth Circuit held that Reynolds's complaint alleged sufficient facts to state a section 1983 claim. *Id.*

Hickman's complaint is somewhat like the complaint in *Reynolds* because Hickman alleged that Franklin saw that Hickman was about to be harmed and did not stop the security door from closing on him. But unlike the complaint in *Reynolds*, which alleged that the pit accident was not an isolated incident, Hickman's complaint did not allege previous instances in which a security door closed on an inmate. The operating guidelines, however, required Franklin to make announcements before, during, and after closing the security door, which may support an inference of risk of harm. So it does not appear to a certainty that if the district court took the allegations in the complaint to be true, it should have concluded that Hickman could introduce no facts to show that Franklin's operation of the door was more than mere negligence. *See Smart Growth Minneapolis*, 954 N.W.2d at 596-97 (stating dismissal is proper "where it appears to a certainty that the plaintiff can introduce no facts consistent with the complaint to support the claim for relief" (quotation omitted)).

Still, we must disregard any harmless error. *See* Minn. R. Civ. P. 61 ("The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."). In *Kellar v. VonHoltum*, we concluded that any error in granting judgment on the pleadings was harmless because "it

[was] clear from the record that [the] claims would have properly been dismissed on summary judgment." 568 N.W.2d 186, 190 (Minn. App. 1997), *rev. denied* (Minn. Oct. 31, 1997).

Even if we assume that Hickman's complaint alleged sufficient facts to state a section 1983 claim, the error was harmless. On this record, Hickman's section 1983 claim would have failed on summary judgment. As discussed above, Hickman failed to create a genuine issue of material fact as to whether Franklin breached his duty of reasonable care or whether Franklin intended to harm Hickman. Deliberate indifference requires a highly culpable state of mind, more than mere negligence. *Kulkay*, 847 F.3d at 643. Here, Hickman offered no evidence that Franklin intended to harm him, and the video recordings show Franklin followed operating guidelines when closing the security door. For that reason, the district court's dismissal of Hickman's section 1983 claim was, at most, harmless error.

Affirmed.